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Emily B. Cauchill REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 26:050. Common carriers.

5 RELATES TO: KRS 139.470, 139.480

6 STATUTORY AUTHORITY: KRS 131.130(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations for the administration and
9 enforcement of Kentucky tax laws. This administrative regulation interprets [~~To interpret~~]the
10 sales and use tax law as it applies to transactions involving common carriers.

11 Section 1. Definition. "Rolling stock" means only that equipment designed to move on rails
12 and used for the transportation of goods or passengers for hire.

13 Section 2. All tangible personal property, digital property, admissions, accommodations, and
14 taxable services sold to or used by common carriers in this state shall be subject to application of
15 the sales or use tax with the exceptions noted in Section 3[2] of this administrative regulation. Tax
16 shall [~~will~~] be applicable to leasing arrangements, or use pursuant to leasing arrangements,
17 whereby items of equipment (including things such as [~~for example, but not limited to, such~~
18 ~~things~~] as tires or batteries) are acquired by common carriers for utilization over extended periods
19 of time in connection with operations. The [~~Such~~] purchases, uses, leases, and uses pursuant to

1 leases shall be ~~[are]~~ subject to the exceptions and qualifications in Section 3 of this administrative
2 regulation.~~[hereinafter noted.]~~

3 Section 3.~~[2.]~~ The following shall be excepted ~~[Excepted]~~ from application of the sales or use
4 tax~~[are the following]:~~

5 (1) Over the road equipment ~~[or floating equipment]~~ which enters this state in actual use in
6 interstate commerce at the time of entering, and is used exclusively in interstate commerce
7 thereafter. This exception shall not be void due to nominal use in intrastate commerce. ~~[(nominal~~
8 ~~use in intrastate commerce will not affect this exception from application of tax).]~~

9 (2) Ships, vessels, and related equipment which enters this state in actual use in interstate
10 commerce at the time of entering and are used exclusively in interstate commerce thereafter. This
11 exception shall not be void due to nominal use in intrastate commerce.

12 (3). Locomotives or rolling stock, including materials for the construction, repair, or
13 modification thereof, or fuel or supplies for the direct operation of locomotives or trains, used or
14 to be used in interstate commerce. The term "supplies" does not include items used for
15 construction, maintenance, or support of the railway system. ~~[The term "rolling stock" shall mean~~
16 ~~only that equipment designed to move on rails and used for the transportation of goods or~~
17 ~~passengers for hire.]~~

18 (4).~~[(3)]~~ Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct
19 operation of aircraft in interstate commerce and used exclusively for the conveyance of property
20 or passengers for hire. This exception shall not be void due to nominal use in intrastate
21 commerce.~~[(nominal use in intrastate commerce shall [will] not affect this exception from~~
22 ~~application of tax).]~~

103 KAR 26:050

APPROVED BY AGENCY:

Daniel P. Bork
DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Sept 12, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 26:050

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates the NECESSITY, FUNCTION, AND CONFORMITY section to include KRS 131.130(1) authorization language, creates a "Definition" section and moves the definition of "rolling stock" into this section per KRS 13A, adds "digital property, admissions, accommodations, and taxable services" to Section 2, removes the term "floating equipment" and replaces it with the more specific sales and use tax law guidance related to ships, vessels and related equipment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of transactions made by and to common carriers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Common carriers including providers of over the road vehicles, ships, vessels, locomotives, aircraft, and their vendors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities detailed in Question 3 will have to ensure they are correctly paying or accruing sales and use tax on previously unlisted digital property, admissions, accommodations and taxable services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to comply with the administrative regulation by the entities detailed in Question 3 based upon the amendments made.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3): The entities detailed in Question 3 will be knowledgeable as to the detailed sales tax transactions listed, and as a result, may remain in good standing with the Department of Revenue.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 26:050

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Undetermined. Any increase in revenue to the state would be attributable to the statutory changes in KRS 139.200 and the addition of these additional taxable items.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a) above.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

(d) How much will it cost to administer this program for subsequent years? No additional costs should be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Undetermined.

Expenditures (+/-): No impact.

Other Explanation: